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Intergovernmental Group of Experts
on Restrictive Business Practices
Tenth session
Geneva, 21 October 1991
Item 2 of the provisional agenda

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Provisional agenda and annotations

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4. Activities relating to specific provisions of the Set:

   (a) Studies on restrictive business practices related to the provisions of the Set of Principles and Rules;

   (b) Information and consultations on restrictive business practices;

   (c) The Model Law or Laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Legislation;

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(d) Technical assistance, advisory and training programmes on restrictive business practices.

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II. ANNOTATIONS TO THE PROVISIONAL AGENDA

Item 1: Election of officers

The Intergovernmental Group of Experts, from its first to its ninth sessions, agreed that the basis on which it should operate at those sessions was the rules of procedure of the Main Committees of the Trade and Development Board. 1/ In consequence, the Group elected a Bureau, composed of a Chairman, five Vice-Chairmen and a Rapporteur, following the seven-session cycle of rotation for office bearers of the Committee on Manufactures. Should the Group decide to continue to operate on the same basis at its tenth session, the Chairman for the tenth session would be elected from List A (Africa), and the Rapporteur from List D. Three Vice-Chairmen would be elected from Lists A and C combined and two from List B.

Item 2: Adoption of the agenda and organization of work

The provisional agenda was agreed in consultations held by the Secretary-General of UNCTAD on 25 July 1991, pursuant to Trade and Development Board decision 143 (XVI). Concerning the organization of the work of the session, the Group has five working days available. It is therefore suggested that the first meeting, on 21 October, be devoted to procedural matters (items 1 and 2) and to introductory statements. The last meeting, on 25 October, would be devoted to item 6 (provisional agenda for the eleventh session of the Intergovernmental Group of Experts), item 7 (other business) and item 8 (adoption of the report of the Intergovernmental Group of Experts). The afternoon of Thursday 24 October would need to be kept free for the preparation of the draft report. The remaining meetings (i.e. from the afternoon of 21 October to the morning of 24 October) would be devoted to the substantive items on the agenda (items 3 to 5).

Item 3: Review of the operation of and experience arising from the application and implementation of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

The Intergovernmental Group of Experts will have before it a note by the UNCTAD secretariat (TD/B/RBP/79) containing a summary of the replies received from States to the note of the Secretary-General of UNCTAD (TD 420/8(6) of 31 May 1991), requesting information on the steps taken by them, at the national or regional levels, to meet their commitment to the Set of Principles and Rules. Under this agenda item, States will be invited to inform the Group of recent action taken by them in the control of restrictive business practices in application and implementation of the Set.

Item 4: Activities relating to specific provisions of the Set:

(a) Studies on RBPs related to the provisions of the Set of Principles and Rules;

(b) Information and consultations on restrictive business practices;

(c) The Model Law or laws for the control of restrictive business practices and the Handbooks on Restrictive Business Practices Legislation;

(d) Technical assistance, advisory and training programmes in restrictive business practices.

(a) Studies on RBPs related to the provisions of the Set of Principles and Rules

At its sixth session, the Group requested the Secretary-General of UNCTAD to embark on the preparation of a study on "the concentration of market power through mergers, takeovers, joint ventures and other acquisitions of control, whether of a horizontal, vertical or conglomerate nature, and its effects on international markets, in particular the markets of developing countries", taking into account the views expressed and information to be supplied by Governments in response to the request by the secretariat to provide information and comments on the basis of an outline. Following preliminary work undertaken by the secretariat, a progress report relating to "experience in the Federal Republic of Germany in controlling mergers and takeovers taking place outside the Federal Republic of Germany but having the effect of creating or strengthening a market dominating position in the domestic market" was submitted to the seventh session of the Group in part I.B. of document TD/B/RPB/48.

Based on the replies received from States to the Secretary-General of UNCTAD's note of 1 March 1988, which contained a draft outline of the study, the secretariat has continued its work in preparation of the study and issued a further progress report in document TD/B/RBP/60, entitled "Concentration of economic power in a changing economic environment and its effects on the trading channels of developing countries", which was submitted to the eighth session of the Group. No further progress report was submitted to the ninth session of the Group, since that session served as the preparatory body for the Second United Nations Conference to Review All Aspects of the Set. The tenth session will have before it a comprehensive report on concentration of market power (TD/B/RBP/80) for its consideration.

(b) Information and consultations on restrictive business practices

In the resolution adopted by the Second United Nations Conference to Review All Aspects of the Set, 2/ the Secretary-General of UNCTAD was requested to issue and regularly update a directory of restrictive business practices control authorities and to prepare an indicative checklist for requests for information, as well as a checklist of possible steps which countries may wish to follow in the preparation of a case, and in their request for consultation. Accordingly, under this sub-item of the agenda, the Intergovernmental Group of Experts will have before it a note by the UNCTAD secretariat (TD/B/RBP/78) containing proposals for a checklist for information; a checklist for consultations; and a directory of addresses of restrictive business practices control authorities.

It should be noted in addition that States are invited to initiate, during the session, bilateral or multilaterial consultations in regard to

issues concerning control of restrictive business practices, in line with section F.4 of the Set of Principles and Rules. The secretariat will provide the facilities necessary for such consultations upon request.

The Second Review Conference considered that the multilateral consultations, discussions and exchanges of views that had taken place under section G, paragraph 3 (a) of the Set among restrictive business practices experts at sessions of the Intergovernmental Group of Experts on Restrictive Business Practices provided a useful forum for consideration of particular restrictive business practices issues and served to establish important contacts between experts from interested countries, and it requested the Intergovernmental Group of Experts to serve as a forum for exchanges of information and consultations at each of its sessions. In this connection, topics should be selected in advance of each session and time made available for the discussions (resolution adopted by the Conference, para. 9).

Accordingly, Group B suggested, in a note of 16 July 1991, reproduced in document TD/B/RBP/84, that the following subjects be discussed at the tenth session of the Group:

(a) The detection and control of cartels; and

(b) Methods of enforcing restrictive business practices laws and the sanctions applied.

(c) <u>The Model Law or Laws for the control of restrictive business practices and the Handbook on Restrictive Business Practices Legislation</u>

Since the eighth session of the Intergovernmental Group of Experts on Restrictive Business Practices and in accordance with that session's agreed decisions and conclusions (Report of the Intergovernmental Group of Experts on its eighth session, (TD/B/1236 - TD/B/RBP/67), annex I) the UNCTAD secretariat has continued its work on the Model Law or Laws on restrictive business practices, revising it and updating the commentary to its articles, in order to take into consideration the important changes in competition policy which have taken place since publication of the revised draft of a model law in 1984. 3/ The tenth session of the Intergovernmental Group of Experts will have before it a provisional revised draft in document TD/B/RBP/81 for its consideration.

In addition, as has become customary at each session of the Intergovernmental Group of Experts, the UNCTAD secretariat has prepared a further compilation of the Handbook on Restrictive Business Practices Legislation (TD/B/RBP/82) containing, as much as possible, recent legislation adopted in developed as well as developing countries and in countries of Central or Eastern Europe.

(d) <u>Technical assistance, advisory and training programmes in restrictive business practices</u>

In accordance with paragraphs 10-16 of the resolution adopted by the Second Review Conference, the UNCTAD secretariat is involved in extensive technical assistance activities, including introductory seminars, symposia,

advisory missions and training workshops in the field of restrictive business practices. A progress report on these activities (TD/B/RBP/83) will be submitted to the Intergovernmental Group of Experts.

Item 5: Work programme on restrictive business practices

On the basis of the review of the operation and experience arising from the application and implementation of the Set of Principles and Rules and of the activities relating to the provisions of the Set already under way, as set out under agenda items 3 and 4 respectively, the Intergovernmental Group of Experts at its tenth session might wish to determine further action to be taken in this field. With respect to agenda item 4 (a) in particular, the Group might wish to launch new studies, and in this connection it is recalled that, at the Group's seventh session, three new studies were proposed by the secretariat, namely:

(a) A study on restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, dealing with ways and means for States to control such practices, in particular when they originate from abroad and have adverse effects on countries' domestic markets and on their exports;

(b) A study on the relationship of restrictive business practices control with industrialization policies and regional integration in developed and developing countries; and

(c) A study on restrictive business practices in the food industry.

Although at the time no decision was taken on the subject, a consensus seemed to exist within the Intergovernmental Group of Experts that study (b) should be undertaken once the study on concentration of market power is finalized. In view of the considerable interest being shown in resort to market forces and hence to competition in a growing number of countries, including numerous developing countries, it might be very timely for the Group to initiate work on such a study, which would analyse the role of competition policy with respect to industrialization and economic growth in developed and developing countries.

On the other issues under agenda item 4, namely sub-items 4 (b), (c), and (d), it is expected that the Intergovernmental Group of Experts will give guidance to the UNCTAD secretariat for the continuation of work in these areas.

The Group might also wish to consider issues for submission to UNCTAD VIII. In this context, discussion might be initiated at the tenth session of the Group on, for instance: (a) corporate policies in both developed and developing countries, with a view to encouraging competition at national and international levels; (b) examination of ways and means of fully integrating multilaterally agreed competition policies into the international trading system.

Item 6: Provisional agenda for the eleventh session of the Intergovernmental Group of Experts

During the session, the UNCTAD secretariat will submit a draft provisional agenda for the eleventh session of the Intergovernmental Group of Experts, the dates of which are tentatively set for 19-23 October 1992.

Item 8: Adoption of the report of the Intergovernmental Group of Experts

Trade and Development Board resolution 228 (XXII) provides that the Group shall submit reports on its work at least once a year to the Board, through the Committee on Manufactures, when practicable and appropriate, and otherwise directly to the Board.

As the thirteenth session of the Committe on Manufactures is not scheduled to be held before the second part of the thirty-eighth session of the Board, the report of the tenth session of the Intergovernmental Group of Experts will be submitted directly to the Board.

Depending on the length of the draft report and the capacity of the processing services of the United Nations Office at Geneva, it may be necessary to schedule the final plenary during the week following the meeting, i.e. 28 October - 1 November 1991, for purposes of adoption of the report.

Notes

1/ The rules of procedure of the Main Committees are contained in document TD/B/740.

2/ TD/RBP/CONF.3/9, annex.

3/ "Elements for provisions of a model law on restrictive business practices" (TD/B/RBP/15/Rev.1), 12 September 1984.

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